

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NESTOR VELEZ, :
:

Plaintiff, :
:

-against- :
:

NANCY A. BERRYHILL, Acting
Commissioner of Social Security, :
Defendant. :
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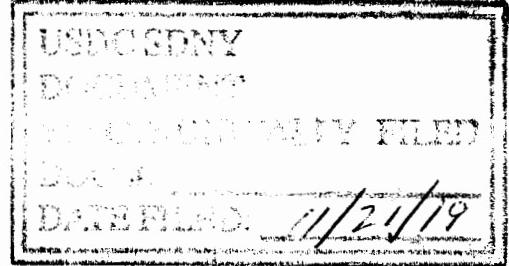
KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

ORDER

18-CV-8603 (PGG) (KNF)

Nestor Velez (“Velez”) commenced this action against the acting Commissioner of Social Security (“Commissioner”) seeking review of an administrative law judge’s (“ALJ”) October 30, 2017 decision. On April 15, 2015, Velez filed an application for disability insurance benefits, pursuant to Title II of the Social Security Act (“SSA”), 42 U.S.C. §§ 401-434, alleging disability since November 30, 2014. A hearing was held before ALJ Robert Gonzalez on July 18, 2017. The ALJ issued his decision on October 30, 2017, finding that Velez had not been under a disability, as defined in the Social Security Act, from November 30, 2014, through the date of the decision and, therefore, denying Velez’s application for disability benefits. The ALJ’s decision became final on July 31, 2018, when the Appeals Council denied Velez’s request for review. Before the Court are the parties’ respective dispositive motions, pursuant to Rules 56 and 12(c) of the Federal Rules of Civil Procedure.

Absent from the parties’ submissions in support of their motions is any discussion of whether the presiding ALJ in this case was properly appointed under the Constitution, an issue addressed by the Supreme Court in Lucia v. S.E.C., ___ U.S. ___, 138 S. Ct. 2044 (2018) in



connection with the appointment of administrative law judges of the Securities and Exchange Commission (“SEC”). In that case, the Supreme Court held that SEC administrative law judges are officers of the United States, subject to the Appointments Clause of the Constitution, see id. at 2049, and that in a circumstance in which an adjudication is tainted with an appointments violation, the appropriate remedy “is a new ‘hearing before a properly appointed’ official.” Id. at 2055 (citation omitted). “To cure the constitutional error, another ALJ . . . must hold the new hearing.” Id.

Since the ALJ in Velez’s case conducted a hearing on July 18, 2017, prior to proper appointment, on July 16, 2018, see SSR 19-1P (2018) (“To address any Appointments Clause questions involving Social Security claims, and consistent with guidance from the Department of Justice, on July 16, 2018, the Acting Commissioner of Social Security ratified the appointments of our ALJs and approved those appointments as her own.”), the question remains whether Velez’s case was heard by a properly appointed official and, thus, whether remanding the matter to a different ALJ from the one who heard Velez’s case on July 18, 2017, is warranted. To aid the Court in analyzing the parties’ motions, on or before December 4, 2019, the parties shall submit to the Court memoranda of law, not to exceed five pages, addressing the above-noted issue.

Dated: New York, New York
November 21, 2019

SO ORDERED:


KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE